

IC 33-39-7

Chapter 7. Retirement Fund

IC 33-39-7-1

Application of chapter

Sec. 1. This chapter applies only to:

- (1) an individual who serves as a prosecuting attorney or chief deputy prosecuting attorney on or after January 1, 1990; and
- (2) a participant employed in a position described in section 8(a)(2) or 8(a)(3) of this chapter who serves in the position after June 30, 1995.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-2

Americans with Disabilities Act defined

Sec. 2. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-3

Board defined

Sec. 3. As used in this chapter, "board" refers to the board of trustees of the public employees' retirement fund.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-4

Fiscal year defined

Sec. 4. As used in this chapter, "fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the following year.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-5

Fund defined

Sec. 5. As used in this chapter, "fund" refers to the prosecuting attorneys retirement fund established by this chapter.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-6

Participant defined

Sec. 6. As used in this chapter, "participant" means a person serving in a position described in section 8 of this chapter who is participating in the fund.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-7

Salary defined

Sec. 7. As used in this chapter, "salary" means the salary paid to a participant by the state, determined without regard to any salary

reduction agreement established under Section 125 of the Internal Revenue Code. The term does not include an amount paid to a participant by a county or counties.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-8

Services defined

Sec. 8. (a) As used in this chapter, "services" means the period beginning on the first day upon which a person first became:

- (1) a prosecuting attorney or chief deputy prosecuting attorney;
- (2) any other deputy prosecuting attorney who is:
 - (A) appointed under IC 33-39-6-2; and
 - (B) paid by the state from the state general fund; or
- (3) the executive director or the assistant executive director of the prosecuting attorneys council of Indiana;

whether that date is before, on, or after January 1, 1990, and ending on the date under consideration, including all intervening employment in a position described in subdivisions (1) through (3). If an individual is elected or appointed to a position described in subdivisions (1) through (3) and serves one (1) or more terms or part of a term, then retires from office, but at a later period or periods is appointed or elected and serves in a position described in subdivisions (1) through (3), the individual shall pay into the fund during all the periods that the individual serves in that position, except as otherwise provided in this chapter, whether the periods are connected or disconnected.

(b) A senior prosecuting attorney appointed under IC 33-39-1 is not required to pay into the fund during any period of service as a senior prosecuting attorney.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-9

Establishment of fund; contents

Sec. 9. The prosecuting attorneys retirement fund is established. The fund consists of the following:

- (1) Each participant's contributions to the fund.
- (2) All gifts, grants, devises, and bequests in money, property, or other form made to the fund.
- (3) All interest on investments or on deposits of the funds.
- (4) A contribution or payment to the fund made in a manner provided by the general assembly.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-10

Fund construed as trust; purpose

Sec. 10. The fund shall be construed to be a trust, separate and distinct from all other entities, maintained to:

- (1) secure payment of benefits to the participants and their beneficiaries; and
- (2) pay the costs of administering this chapter.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-11

Administration; commingling; duties of board; appeals; confidentiality of fund records

Sec. 11. (a) The board shall administer the fund, which may be commingled with the public employees' retirement fund for investment purposes.

(b) The board shall do the following:

(1) Determine eligibility for and make payments of benefits under this chapter.

(2) In accordance with the powers and duties granted the board in IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6, administer the fund.

(3) Provide by rule for the implementation of this chapter.

(c) A determination by the board may be appealed under IC 4-21.5.

(d) The powers and duties of:

(1) the director and the actuary of the board;

(2) the treasurer of state;

(3) the attorney general; and

(4) the auditor of state;

with respect to the fund are those specified in IC 5-10.3-3 and IC 5-10.3-4.

(e) The board may hire additional personnel, including hearing officers, to assist in the implementation of this chapter.

(f) Fund records of individual participants and participants' information are confidential, except for the name and years of service of a fund participant.

As added by P.L.98-2004, SEC.18. Amended by P.L.94-2004, SEC.7.

IC 33-39-7-12

Contributions

Sec. 12. (a) Except as provided in subsection (b), each participant shall make contributions to the fund as follows:

(1) A participant described in section 8(a)(1) of this chapter shall make contributions of six percent (6%) of each payment of salary received for services after December 31, 1989.

(2) A participant described in section 8(a)(2) or 8(a)(3) of this chapter shall make contributions of six percent (6%) of each payment of salary received for services after June 30, 1994.

A participant's contributions shall be deducted from the participant's monthly salary by the auditor of state and credited to the fund.

(b) The state may pay the contributions for a participant.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-13

Withdrawals

Sec. 13. (a) A participant who:

(1) ceases service in a position described in section 8 of this

chapter, other than by death or disability; and
(2) is not eligible for a retirement benefit under this chapter;
is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. The date upon which the withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board. Upon withdrawal the participant is entitled to receive the total sum contributed plus interest at the rate of five and one-half percent (5.5%) compounded annually, payable not later than sixty (60) days from the date of the withdrawal application.

(b) Notwithstanding section 8 of this chapter, a participant who withdraws from the fund under subsection (a) and becomes a participant again at a later date is not entitled to service credit for years of service before the withdrawal.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-14

Interest credits

Sec. 14. (a) Interest shall be credited annually on June 30 at the rate of five and one-half percent (5.5%) on all amounts credited to the member as of June 30 of the preceding year.

(b) Contributions begin to accumulate interest at the beginning of the fiscal year after the year in which the contributions are due.

(c) When a member retires or withdraws, a proportional interest credit determined under this chapter shall be paid for the period elapsed since the last date on which interest was credited.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-15

Eligibility for retirement benefits

Sec. 15. A participant whose employment in a position described in section 8 of this chapter is terminated is entitled to a retirement benefit computed under section 16 or 18 of this chapter, beginning on the date specified by the participant in a written application, if all of the following conditions are met:

(1) The application for retirement benefits and the choice of the retirement date is filed on a form provided by the board and the retirement date is:

- (A) after the cessation of the participant's service;
- (B) on the first day of a month; and
- (C) not more than six (6) months before the date the application is received by the board.

However, if the board determines that a participant is incompetent to file for benefits and choose a retirement date, the retirement date may be any date that is the first of the month after the time the participant became incompetent.

(2) The participant:

- (A) is at least sixty-two (62) years of age and has at least ten (10) years of service credit; or
- (B) meets the requirements for disability benefits under

section 17 of this chapter.

- (3) The participant is not receiving and is not entitled to receive any salary for services currently performed, except for services rendered as a senior prosecuting attorney under IC 33-39-1.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-16

Computation of retirement benefits

Sec. 16. (a) This section does not apply to a participant who meets the requirements for disability benefits under section 17 of this chapter.

(b) Except as provided in subsections (c) and (d), the amount of the annual retirement benefit to which a participant who applies for a retirement benefit and who is at least sixty-five (65) years of age is entitled equals the product of:

- (1) the highest annual salary that was paid to the participant before separation from service; multiplied by
- (2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
Less than 10	0
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

(c) If a participant who applies for a retirement benefit is not at least sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-fourth percent (0.25%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday.

(d) Benefits payable to a participant under this section are reduced by the pension, if any, that would be payable to the participant from the public employees' retirement fund if the participant had retired from the public employees' retirement fund on the date of the participant's retirement from the prosecuting attorneys retirement fund. Benefits payable to a participant under this section are not reduced by annuity payments made to the participant from the public employees' retirement fund.

(e) If benefits payable from the public employees' retirement fund exceed the benefits payable from the prosecuting attorneys

retirement fund, the participant is entitled at retirement to withdraw from the prosecuting attorneys retirement fund the total sum contributed plus interest at the rate of five and one-half percent (5.5%) compounded annually.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-17

Eligibility for disability benefits; transcripts, reports, records, and other materials

Sec. 17. (a) Except as provided in subsection (b), a participant who becomes disabled while in active service in a position described in section 8 of this chapter may retire for the duration of the disability if:

- (1) the participant has at least five (5) years of creditable service;
- (2) the participant has qualified for Social Security disability benefits and has furnished proof of the Social Security qualification to the board; and
- (3) at least once each year until the participant becomes sixty-five (65) years of age a representative of the board verifies the continued disability.

For purposes of this section, a participant who has qualified for disability benefits under the federal civil service system is considered to have met the requirement of subdivision (2) if the participant furnishes proof of the qualification to the board.

(b) Benefits may not be provided under this chapter for any disability that:

- (1) results from an intentionally self-inflicted injury or attempted suicide while sane or insane;
- (2) results from the participant's commission or attempted commission of a felony; or
- (3) begins within two (2) years after a participant's entry or reentry into active service in a position described in section 8 of this chapter and was caused or contributed to by a mental or physical condition that manifested itself before the participant entered or reentered active service.

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated to prove that an individual is qualified for disability benefits under this section shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-18

Computation of disability benefits

Sec. 18. (a) Except as provided in subsection (b), the amount of the annual benefit payable to a participant who meets the requirements for disability benefits under section 17 of this chapter is equal to the product of:

- (1) the annual salary that was paid to the participant at the time

of separation from service; multiplied by
(2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
Less than 5	0
5-10	40%
11	41%
12	42%
13	43%
14	44%
15	45%
16	46%
17	47%
18	48%
19	49%
20 or more	50%

(b) Benefits payable to a participant under this section are reduced by the amounts, if any, that are payable to the participant from the public employees' retirement fund.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-19

Benefits payable to surviving spouse; eligibility; computation

Sec. 19. (a) The surviving spouse of a participant who:

(1) dies; and

(2) on the date of death:

(A) was receiving benefits under this chapter;

(B) had completed at least ten (10) years of service in a position described in section 8 of this chapter; or

(C) met the requirements for disability benefits under section 17 of this chapter;

is entitled, regardless of the participant's age, to the benefit prescribed by subsection (b).

(b) The surviving spouse is entitled to a benefit for life equal to the greater of:

(1) seven thousand dollars (\$7,000); or

(2) fifty percent (50%) of the amount of retirement benefit the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement benefits on the date of death, with reductions as necessary under section 16(c) of this chapter.

(c) Benefits payable to a surviving spouse under this section are reduced by the amounts, if any, that are payable to the surviving spouse from the public employees' retirement fund as a result of the participant's death.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-20

Benefits payable to dependent children; eligibility; computation; distribution

Sec. 20. (a) If a participant's spouse does not survive the participant, the dependent child of a participant is, upon the death of the participant, entitled to a benefit equal to the benefit the participant's spouse would have received under section 19 of this chapter.

(b) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, that dependent child is entitled to receive a benefit equal to the benefit the spouse was receiving or would have received under section 19 of this chapter.

(c) If there is more than one (1) dependent child, the dependent children are entitled to share the benefit equally.

(d) Each dependent child is entitled to receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

(e) Benefits payable to a dependent child are reduced by the amounts, if any, that are payable to the dependent child from the public employees' retirement fund.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-21

Withdrawal of funds by survivors or participant's estate

Sec. 21. (a) If benefits are not payable to the survivors of a participant who dies, and if a withdrawal application is filed with the board by the survivors or the participant's estate, the total of the participant's contributions plus interest at the rate of five and one-half percent (5.5%) compounded annually, minus any payments made to the participant, shall be paid to:

- (1) the surviving spouse of the participant;
- (2) any dependent or dependents of the participant, if a spouse does not survive; or
- (3) the participant's estate, if a spouse or dependent does not survive.

(b) The amount owed a spouse, dependent or dependents, or estate under subsection (a) is payable not later than sixty (60) days after the date of receipt of the withdrawal application.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-22

Satisfaction of Section 401 of the Internal Revenue Code requirements

Sec. 22. The fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code as applicable to the fund. In order to meet those requirements, the fund is subject to the following provisions, notwithstanding any other provision of this chapter:

- (1) The board shall distribute the corpus and income of the fund to participants and their beneficiaries in accordance with this chapter.

(2) A part of the corpus or income of the fund may not be used for or diverted to any purpose other than the exclusive benefit of the participants and their beneficiaries.

(3) Forfeitures arising from severance of employment or death, or for any other reason, may not be applied to increase the benefits a participant would otherwise receive under the retirement fund law.

(4) If the fund is terminated, or if all contributions to the fund are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the fund is subject to the following provisions:

(A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination for purposes of determining any benefits.

(B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

(6) The board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of participant's beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefits specified by Section 415 of the Internal Revenue Code. If a participant's benefits under this chapter would exceed that maximum benefit, the benefit payable under this chapter shall be reduced as necessary.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-23

Appropriations

Sec. 23. (a) For purposes of this chapter, the following amounts are appropriated for each biennium:

(1) From the state general fund, the amount required to actuarially fund participants' retirement benefits, as determined

by the board on recommendation of an actuary.

(2) From the fund, the amount required for administration purposes.

(b) The biennial appropriations provided in this section shall be credited to the board annually in equal installments in the month of July of each year of the biennium.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-24

Rollover to eligible retirement plan

Sec. 24. Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-25

Administration; service credit

Sec. 25. (a) Notwithstanding any other provision of this chapter, the fund must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A member on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act, but is not entitled to receive credit for service for benefit purposes.

(b) Notwithstanding any other provision of this chapter, a participant is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

As added by P.L.98-2004, SEC.18.